

REQUEST FOR COMPETITIVE SEALED PROPOSAL

RFP NO. FY09-100

GENERAL PROVISIONS FOR CONTRACTS

1. DEFINITIONS

As used throughout this document, the following terms shall have the meanings set forth:

- 1.1 AABRC@ means the Arizona Biomedical Research Commission.
- 1.2 ABayh-Dole Act@ means the provisions of 35 U.S.C. ' ' 200 through 212 (as amended) together with all regulations promulgated there under.
- 1.3 ABudget Request@ means those provisions of the Contract that describe the specific financial amounts, payment, accounting, and substantiation requirements and arrangements of the Contract.
- 1.4 AChairman@ means the Arizona Biomedical Research Commission (ABRC) Chairman or duly authorized representative.
- 1.5 ACommission@ means the Arizona Biomedical Research Commission (ABRC) or any successor in interest.
- 1.6 AContract@ means all written documents comprising the agreement of the parties, including but not limited to, these General Provisions, the solicitation, the Contractor=s proposal, the Acceptance Declination of Contract Award, Budget Requests, Budget Summaries, and budget transfer requests.
- 1.7 AContract Material@ means all written and electronic information, recordings, reports, findings, research information, abstracts, results, software, data, and any materials created, prepared, or received by the Contractor and Subcontractors in performance of this Contract.
- 1.8 AContractor@ means the person, firm, or organization performing, or accountable for performing the services or delivering the items described in this Contract.
- 1.9 AControlling Party@ means the party to this Contract is in the Best Position to perform the duties of the Controlling Party hereunder. For purposes of this

Contract, “Best Position” means the party to the Contract who has the money to fully advance the development of any Discovery, and/or the party that owns or controls a dominant patent or a minor patents critical to the development of any Discovery.

- 1.10 ACost Reimbursement@ provides for reimbursement to the Contractor for actual costs incurred, as outlined in the Contract, in delivering services under the Contract.
- 1.11 “Derivative Research means any research that was deduced or evolved from prior research and/or testing of a discovery.
- 1.12 ADerivative Work@ means any work that is deduced or obtained from Contract Material or any portion thereof including, but not limited to any translation, arrangement, abridgment, recasting, transformation, or adaptation of Contract Material or any portion thereof.
- 1.13 ADevelopment Costs@ shall include only those Verifiable expenses arising solely and directly from the testing of a discovery or any derivative research thereto, evaluation of a Discovery, registration of a Discovery, obtaining or protecting a patent covering a Discovery, marketing of a Discovery (including fees or commissions payable to a third party), negotiations of contracts with third parties for licenses to make use of a Discovery, attorneys= fees for obtaining a patent, attorney=s fees for the negotiation and/or drafting of license agreements for a Discovery, and licensing of a Discovery. Verifiable expenses shall not include any allocation of indirect costs by any party.
- 1.14 ADirect payment of money to the research being performed hereunder@ means those payments of money made directly to the research being performed under this Contract solely for the purpose of completing that research and the term shall not include any indirect payments or administrative costs. In calculating a party=s direct payment of money to the research being performed hereunder, the party may include amounts of salaries and benefits proportionate to the amount of time devoted by an employee directly to the research being performed hereunder, and funds that it receives from outside grants and other sources that the party pays directly to the research being performed under this Contract solely for the purpose of completing that research.
- 1.15 ADiscovery@ means any discovery, invention, or resulting patent(s) that arise(s) from research carried on by or under the direction of the Contractor in performance of this Contract.
- 1.16 AEDA@ means effective date of Amendment.

- 1.17 AExecutive Director@ means the person designated to represent the Commission in the program administration of this Contract.
- 1.18 AGross Income@ means the total revenue received by the Controlling Party from the manufacture, use, lease, or sale of title to a Discovery or license to use thereof or any amounts attributable thereto, including the fair market value of any in-kind compensation.
- 1.19 AManagement Fees@ means fees for expenses of maintenance of a Discovery and administrative costs arising from the accounting and reporting required under this Agreement. Management Fees shall be paid only from Net Income received after all Development Costs of both parties have been fully reimbursed. Management Fees shall not exceed ten percent (10%) of the Net Income received.
- 1.20 ANet Income@ means the Gross Income received by the Controlling Party less all Development Costs.
- 1.21 ANet Net Income@ means the Gross Income received by Controlling Party less:
- 1.21.1 All Development Costs;
- 1.21.2 Management Fees; and
- 1.21.3 All other amounts agreed to be excluded by prior written approval of both parties.
- 1.22 AOutside Funding@ means all funding for the work to be conducted by the Principal Investigator under this Contract that does not come from the Contractor and shall include internal monetary awards from the Contractor over which the Principal Investigator has exclusive control.
- 1.23 APrincipal Investigator@ means a person or entity who provides services or materials pursuant to the Contract in the nature of a developer, inventor, or researcher, usually requiring special skill and advanced education of a mental and intellectual nature. A Principal Investigator is usually a person who is an employee or agent of the Contractor, but a Principal Investigator could also be an entity, the Contractor, or a Subcontractor. A Contract may involve more than one Principal Investigator.
- 1.24 AProfessional acts@ means services or acts of persons whose vocation or occupation requires special, usually advanced, education and skill which is predominantly mental or intellectual rather than physical or manual.
- 1.25 AReporting Period@ means one of the two Reporting Periods during each calendar

year. The first Reporting Period of the calendar year shall run from the first business day of each calendar year to the last business day in June. The second Reporting Period of each year shall run from the first business day in July to the last business day in December.

- 1.26 AShall@ means what is mandatory.
- 1.27 AState@ means the State of Arizona including the Commission, and shall not, for purposes of this contract, include the Contractor.
- 1.28 ASubcontract@ means any Contract between the Contractor and a third party to provide or be accountable for providing all or a specified part of the services or items which the Contractor has himself contracted with the Commission to provide.
- 1.29 AVerifiable@ means evidenced by true and complete copies or originals of bills, invoices or the like and similar evidence of payments of such bills, invoices or the like.
- 1.30 AWork Statement@ means those provisions of this Contract which delineate the scope and manner of the specific services to be performed and/or describe the items to be supplied in the performance of this Contract. If the provisions of the Work Statement conflict with the General Provisions, the terms of the Work Statement shall govern.

2. GENERAL REQUIREMENTS

- 2.1 The Contract Term is the date identified by the Commission as the start and end date of the Contract or Amendment. The Contract Term may begin before the Contract or Amendment is fully executed by the parties or at a later date as specified therein. The Contractor shall not bill the Commission for costs incurred under this contract or Amendment until the Contract or Amendment is fully executed. The Contractor may however, at the Contractor's own risk begin work on the Contract or Amendment and may incur allowable expenditures following the Contractor's receipt of written notification of the Commission's determination to award or extend the Contract or Amendment. The written notification shall contain an identified Contract Term in the notification.
- 2.2 The effective date of the Contract or Amendment is the date the Contract or Amendment is signed by all parties.
- 2.3 The Contractor, unless otherwise exempt by law, shall obtain and maintain all licenses, permits and authority necessary to do business and render services under this Contract.
- 2.4 The parties hereto agree that the Contractor is an independent Contractor in the

performance of this Contract and is not an officer, employee or agent of the Commission.

- 2.5 Except for persons employed by the Arizona Board of Regents, or units thereof, no individual employed by the State shall have a substantial interest in this Contract or receive a substantial benefit that may arise there from.
- 2.6 Contractors receiving State funds under this Contract shall comply with the certified financial and compliance audit provisions of A.R.S. ' 35-181.03.
- 2.7 If matching funds are required to receive an award of this Contract, matching funds should be met with currency or cash equivalents, unless otherwise specified. The Commission may elect to authorize limited in-kind matches on a case by case basis. Release time for clinicians will be considered as a component of the Contractor match. Salary limits and other information describing allowable release time for purposes of the match can be found in the instructions for the budget.

3. OTHER CONTRACTS

The Commission may authorize additional work related to this Contract or award other Contracts for such work. The Contractor shall cooperate reasonably with such other Contractors and/or State employees in scheduling and coordinating its work with such additional work. The Contractor shall afford other Contractors reasonable opportunity for the execution of their work and shall not commit or permit any act which will unreasonably interfere with the performance of work by any other Contractor or by State employees. The Commission shall equitably enforce this Section as to all Contractors to prevent unreasonably burdening any Contractor.

4. SUBCONTRACTS AND ASSIGNMENTS

- 4.1 The Contractor shall not subcontract with any other person or entity to provide or account for any service or item required by this Contract unless (a) the subcontract was already part of the proposal or (b) the Commission has provided the Contractor with prior written approval.

- 4.2 If Subcontracts are permitted hereunder, the Contractor agrees to use written Subcontracts which conform to Federal and State laws and regulations appropriate to the service or activity covered by the Subcontract, and which are consistent with the terms of this Contract.
- 4.3 The Contractor is responsible for the actions and performance of any Subcontractor. The Contractor is also responsible for Contract performance without regard to whether Subcontractors are used.
- 4.4 The Contractor shall submit a complete copy of each proposed Subcontract with all attachments and proposed amendments to the Commission for its prior approval. Upon approval by the Commission and the execution of the Subcontract, the Contractor shall submit a complete copy of each Subcontract with all attachments to the Executive Director within fifteen (15) business days of its effective date.
- 4.5 The Contractor=s rights or obligations under this Contract shall not be assigned without the prior written consent of the Commission. It shall be deemed to be a assignment without approval if, without the prior written approval of the Commission: (i) more than fifty percent (50%) of the voting control of the Contractor has been or will be transferred to third parties within a twelve (12) month period or (ii) more than fifty percent (50%) of the equity ownership in the Contractor has been or will be transferred to third parties within a twelve (12) month period.
- 4.6 The Contractor and all subcontractors shall agree that if, at anytime while this Contract is in effect, they or any one of them acquire or have acquired patents, rights, or interests in a patent that dominates over a Discovery that arises under this Contract, the Contractor or subcontractor that so acquired or acquires will notify the Commission within thirty (30) days of learning of a dominating patent and will cooperate fully with the Commission if it so requests in order to protect any interest in or with respect to the Discovery that belongs to or is to be received, in whole or in part, by the Commission pursuant to the Contract.

5. OWNERSHIP OF INTELLECTUAL PROPERTY

- 5.1 It is the intent of the Commission that all intellectual property developed under this Contract be used and controlled in ways to produce the greatest benefit to the parties to this Contract, the inventor, the inventor=s parent institution, and the citizens of the State of Arizona.
- 5.2 Copyrights and Research Information
 - 5.2.1 Title and exclusive copyright to all Contract Material shall vest solely in the Controlling Party. Each party to this Contract shall execute all documentation requested by the Controlling Party for the purpose of securing for the Controlling Party all interests in and to all copyrights to the Contract Material.
 - 5.2.2 Each party to this Contract that is not the Controlling Party shall have full, complete, perpetual, irrevocable and nontransferable rights to reproduce, duplicate, adapt, make Derivative Works, distribute, display, disclose, publish, and otherwise use all Contract Material. The Controlling Party may, at its option, and in its sole discretion, hold, sell, or otherwise dispose of its title or any lesser right or interest to any Contract Material. If the Controlling Party declines to take title to the Contract Material or desires to transfer title

of the Contract Material to a third party, the other party to this Contract shall have the first right of refusal to take title to that Contract Material and act as the Controlling Party hereunder.

- 5.2.3 Prior to any presentation or publication, the Contractor shall notify the Commission of the date, time and location of any planned publication and forward to the Commission a copy of any Contract Material or Derivative Works including, but not limited to, manuscripts, abstracts, presentations, illustrations, tables, and photographs accepted for publication prior to the publication release date. Contract Material that contains proprietary or confidential information, sent to the Commission for review, shall be kept confidential to the extent permitted by law. Neither party shall release confidential information to the public without the prior express written permission of the other or pursuant to subpoena or court order.
- 5.2.4 Unless otherwise required by law, neither party shall release draft, interim, incomplete, or unfinished Contract Material to the public received from, or concerning any ongoing research project.
- 5.2.5 The Contractor shall give recognition to the Commission for its support of the research project when publishing Contract Material, Derivative Work, or releasing research project related public information.

5.3 Discoveries

- 5.3.1 Except as provided in section 5.7 below, title to and the exclusive right to patent any Discovery resulting from research carried on by or under the direction of the Contractor in performance of this Contract shall vest solely in the Controlling Party. Each party to this Contract shall execute all documentation requested by the Controlling Party for the purpose of securing for the Controlling Party all rights (including but not limited to the right to patent), titles, and interests in and to such Discovery in the United States and in all foreign countries or jurisdictions. If the Controlling Party declines to take title or desires to transfer title of the Discovery to a third party, the other party to this Contract shall have the first right of refusal to take title to that Discovery and act as the Controlling Party hereunder.
- 5.3.2 Each party to this Contract that is not the Controlling Party shall have full, complete, perpetual, irrevocable, and nontransferable rights to duplicate, produce, and otherwise use any Discovery. The Controlling Party may, at its option, and in its sole discretion, hold, sell, or otherwise dispose of its title or any lesser right or interest to any Discovery. No less than ten (10) business days prior to any transfer of title or any lesser interest in a Discovery, the Controlling Party shall notify all other parties of the proposed transfer and provide copies of the operative transfer documents to the other parties. The Controlling Party may evaluate, patent, or license any Discovery using its own resources or may make an agreement with the other party to this Contract, third party, or patent management organizations to undertake such activities.
- 5.3.3 The Contractor shall require each Principal Investigator and other persons involved in the research hereunder to promptly (defined as no later than 30 days after discovery) disclose all Discoveries made hereunder to the Commission and to a designated Contractor

representative. Within 60 days of the parties' receipt of the disclosure and any supporting documentation, the parties shall mutually determine which party shall be the Controlling Party.

5.3.4 The Controlling Party will be responsible for all actions or decisions related to the Discovery. The Controlling Party may take one or more of the following actions relating to the Discovery:

5.3.4.1 transfer, license, or assign the Discovery or any interest in the Discovery outright to the discoverer or inventor.

5.3.4.2 transfer, license, or assign the Discovery or any interest in the Discovery to one or more institutions or patent management organizations for patent and/or commercial development;

5.3.4.3 evaluate the Discovery for commercial potential by a third party;

5.3.4.4 license or assign the Discovery or any interest in the Discovery to any other party to this Contract for patent management or development; or

5.3.4.5 patent the Discovery and then license or assign the Discovery to any other person or entity for commercialization.

5.3.5 The Controlling Party shall not grant or sell a license or any other interest in a Discovery unless the other party to this Agreement has been given a minimum of 30 days written notice prior to the grant or sale.

5.4 Within sixty (60) days of receipt of any Gross Income from the sale, transfer, or licensing of any Contract Material or any copyright thereto or any Discovery or patent thereto, the Controlling Party shall reimburse each party their respective Discovery Costs, Management Fees, and distribute their shares of the Net Net Income as described in section 5.5 below.

5.5 For sections 5.2 and 5.3, within forty-five (45) days of the receipt of Gross Income, the Controlling Party shall distribute the Gross Income in the following order and in accord with the following:

5.5.1 The Controlling Party shall reimburse each party to this Agreement for all accrued Development Costs. The Controlling Party shall distribute reimbursements of Development Costs between itself, and all other parties to the extent possible. If sufficient funds are not available to pay all Development Costs in full, the Gross Income shall be distributed pro rata to each party. Before paying any Management Fees or distributing any Net Net Income, the Controlling Party shall first pay all accrued Development Costs of all parties.

5.5.2 The Controlling Party may, at its discretion, take a Management Fee not to exceed ten percent (10%) of the Net Income received. The Management Fees distributed to the Controlling Party shall not exceed ten percent (10%) of the Net Income. Management Fees shall be reimbursed only after all of the accrued Development Costs of all parties

have been reimbursed in full. The Commission may adopt a percentage Management Fee equal to that elected by the Contractor or taken by the Contractor acting as Controlling Party on other projects.

- 5.5.3 The Controlling Party shall pay all of the Net Net Income equally to each party unless the parties agree otherwise in writing. Net Net Income may be distributed only after all of the accrued Development Costs of all parties have been fully reimbursed and the applicable Management Fees have been paid.
- 5.5.4 In the event that a share of Net Net Income is received by the Commission pursuant to section 5.5, a portion of that share of Net Net Income received by the Commission shall be paid to the individual(s) who created that intellectual property as additional consideration for his, her, or their creative efforts. This portion is to be determined by the commission considering individual institutional policy, recommendations from patent management organizations or any other knowledgeable source, and other relevant factors. In no event will the inventor or inventors collectively, be awarded less than 25 percent of the share of Net Net Income provided to the Commission.
- 5.6 Within thirty (30) days after the end of each Reporting Period, the Controlling Party shall account to each party in writing for all Gross Income received during that Reporting Period and all distributions there from. At that same time, each party to this Agreement shall report to the other all outstanding Development Costs that it has incurred under this Agreement.
- 5.7 If the Bayh-Dole Act applies to a Discovery made hereunder, and the Commission would otherwise be the Controlling Party hereunder, the party that is the Contractor under the Bayh-Dole Act shall have title to the Discovery. Within sixty (60) days of the Commission's receipt of written notice in section 5.3.3, the Commission may make written request for and the Contractor shall make an application to the Federal funding agency and/or the United States Department of Commerce as provided in the Bayh-Dole Act for permission to transfer the title to such Discovery or resulting patent to the Commission. The Commission shall approve the form of the application before it is submitted. The Commission shall be informed promptly of any subsequent communications with the Federal funding agency and/or the United States Department of Commerce regarding the request. If the Federal funding agency and/or the United States Department of Commerce does not grant permission for the transfer: (1) the Commission shall, nevertheless, have the rights to its share of Gross Income as described in 5.5, and (2) the Contractor shall then assume the responsibilities and authorities of the Controlling Party or license the Discovery to the Commission for purposes of commercial development. In all circumstances, and without regard to whether the Commission has requested the transfer of title or patent rights or whether the Federal funding agency and/or the United States Department of Commerce has approved any such transfer, the Commission shall retain its right to share in the distribution of Gross Income as described in section 5.5 above.

6. CONFIDENTIALITY

- 6.1 The Contractor, its Principal Investigators, employees, and authorized agents engaged in work under this Agreement may present at symposia or professional meetings and publish in journals, theses or dissertations, or otherwise of their own choosing, methods and Contract Material. The

Contractor agrees to submit manuscripts of proposed publications to the Commission and all other parties prior to publication for review to ascertain that no confidential or proprietary information has been inadvertently disclosed by the proposed manuscript. The Contractor shall delay publication for no less than thirty (30) days to allow the parties to review the manuscript. If the parties determine that confidential or proprietary information may be disclosed, the Contractor shall further delay publication for a time period necessary to allow the parties to protect their interests.

6.2 Except as provided in Sections 5.2.3 and 6.1, the Contractor shall not disclose any Contract Material any third party without the Commission's prior written consent, which shall not be unreasonably withheld.

6.3 To accomplish the work under this Agreement, the Commission may disclose information to the Contractor that it considers confidential. The Commission agrees to disclose only information necessary to the work and to clearly mark as "Confidential Information" any information it considers confidential. The Commission will send Confidential Information in writing only to the Principal Investigator or orally disclose it to the Principal Investigator and reduce it to writing within thirty (30) days of disclosure. The Contractor and the Principal Investigator agree, to the extent permitted by law, that Confidential Information will remain the property of the Commission and, for 5 years from the end of this Agreement, Confidential Information will not be used or disclosed to others except in furtherance of this Agreement. This obligation of non-use and non-disclosure will not apply to any portion of the Confidential Information that: (1) was known to the Principal Investigator before disclosure by ABRC; (2) is disclosed to the Principal Investigator by a third party; or (3) is or becomes known to the public through no fault of the Principal Investigator.

7. CONFIDENTIALITY OF PERSONAL HEALTH INFORMATION AND MEDICAL RECORDS

7.1 The Contractor warrants that it is familiar with the requirements of HIPAA and will comply with all applicable HIPAA requirements in the performance of this Contract. Contractor agrees to notify the Commission of any HIPAA related concerns arising under the performance of this Contract, and will cooperate with the Commission in any HIPAA related inquiries.

7.2 The Contractor shall be in compliance with all Federal and State law requirements regarding the handling and disclosure of confidential medical/health information and records. No medical information contained in Contractor's records or obtained from the Commission or from others in carrying out its functions under this Contract shall be used or disclosed by Contractor, its agents, officers, employees or Subcontractors except as lawfully allowed and that such disclosure is essential to the performance of duties under this Contract. Disclosure to the Commission is deemed essential to the performance of duties under this Contract. Medical information, names, or other information regarding any person applying for, claiming, or receiving items or services contemplated in this Contract, or any employer of such person shall not be made available for any political or commercial purpose. Information received from a Federal or State agency or from any person or provider acting under the Federal or State agency pursuant to Federal or State law, shall be disclosed only as provided by Federal or State law.

8. RECORDS

- 8.1 Contractors who submit cost or pricing data as provided in A.R.S. '41-2543 shall maintain books and records which reflect that cost or pricing data under the Contract and shall reflect the Contract services and expenditures. All books and records shall be maintained in accordance with Generally Accepted Accounting Principles (GAAP).
- 8.2 Contractor further agrees:
- 8.2.1 To timely submit all accurate and complete reports and invoices as specified in the Work Statement of this Contract. Contractor and Subcontractor understand that the failure to timely submit required accurate and complete documents in the performance of this Contract may be grounds to withhold payments otherwise due or may result in termination of the Contract.
- 8.2.2 The Contractor and any Subcontractors shall preserve and make available to the Commission and its auditors all records for a period of five (5) years from the date of final payment under this Contract and for such period as is required by any other paragraph of this Contract including the following:
- 8.2.2.1 If this Contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five (5) years from the date of any such termination.
- 8.2.2.2 Records that relate to disputes, litigations or the settlement of claims arising out of the performance of this Contract or to cost and expenses of this Contract to which exception has been taken by the Executive Director shall be retained by the Contractor until such appeals, litigations, claims or exceptions have been finally resolved.
- 8.2.2.3 If requested, the Contractor shall submit such records relating to the Contract to the address specified by the Executive Director.

9. INDEMNIFICATION AND INSURANCE

- 9.1 Unless the Contractor is insured pursuant to A.R.S. ' ' 41-621, *et seq* the Contractor shall at all times indemnify, defend and save harmless the Commission and/or any of its agents, officials and employees from any and all claims, demands, suits, actions, proceedings, loss, cost and/or damages of every kind and description including any attorney=s fees and/or litigation expenses brought or made against or incurred by the Commission on account of loss of or damage to any property or for injuries to or death of any person, caused by, arising out of, or contributed to, in whole or in part, by reasons of any act, omission, professional error, fault, mistake, or negligence of the Contractor, its employees, agents, representatives, or Subcontractors, their employees, agents, or representatives in connection with or incident to the performance of this contract or arising out of Worker=s Compensation claims, Unemployment Compensation claims, or Unemployment Disability Compensation claims of employees of the Contractor and/or its Subcontractors or claims under similar such laws or obligations. The Contractor=s obligation under this paragraph shall not extend to any liability caused by the sole negligence of the Commission or its employees.

- 9.2 The Contractor shall comply with all laws regarding unemployment insurance and worker=s compensation.
- 9.3 The Contractor shall provide and maintain liability insurance as described below or liability coverage from the Arizona Department of Administration Risk Management Division to cover all actions of the Contractor, any Subcontractor, and their employees, agents, or representatives. In no event shall the total coverage be less than the minimum insurance coverage specified below:
- 9.3.1 Comprehensive general liability insurance with a minimum combined single limit of two million dollars (\$2,000,000) each occurrence. The policy shall include coverage for bodily injury, broad form property damage, (including completed operations), personal injury (including coverage of Contractual and employee acts), blanket Contractual, Contractor=s protective, sudden and accidental pollution, products and completed operations.
- 9.3.2 Comprehensive automobile liability insurance with a combined single limit for bodily injury and property damage of not less than two million dollars (\$2,000,000) each occurrence with respect to Contractor=s vehicles (whether owned, hired, non-owned), assigned to or utilized in the performance of this Contract.
- 9.3.3 Professional liability insurance with a minimum combined single limit of two million dollars (\$2,000,000) for each occurrence if professional acts shall be required in the performance of this Contract.
- 9.4 The Contractor shall name the State of Arizona, its agents, officials and employees as additional insured's and shall specify that the insurance afforded by the Contractor shall be primary insurance and any insurance or self-insurance of the State, the Commission or its employees shall be excess, not contributory insurance, to that provided by the Contractor. Said policy shall contain a severability of interests provision. Such policy(ies) shall contain a requirement that the insurer notify the Commission promptly of any change in coverage terms or amounts, in advance of a lapse or cancellation of coverage, or of failure to pay premium when due.
- 9.5 Contractor=s failure to procure and maintain the required liability insurance or to provide proof thereof to the Commission within thirty (30) days following the commencement of a new policy period, shall constitute a material breach of the Contract upon which the Commission may immediately terminate this Contract. Prior to the effective date of this Contract, the Contractor shall furnish the Commission with copies of the State of Arizona Certificate of Insurance (RM7200.1) drawn in conformity with the above insurance requirements. The State of Arizona reserves the right to request and receive certified copies of any or all of the above policies and/or endorsements.

10. CERTIFICATIONS

The Contractor certifies and agrees to provide proof that all services shall be performed in conformity with the requirements of this Contract and by qualified personnel in accordance with generally recognized standards in the biomedical research community and industry. The Commission must approve all certifications relating to animal or human research.

Contractor acknowledges that the Principal Investigator is critical to the performance of this contract and certifies that the named Principal Investigator will be responsible for the work performed. The Contractor shall notify the Commission of any changes in the status of the Principal Investigator under this contract.

11. AMENDMENTS

- 11.1 No condition, requirement or alteration contained in or made a part of this Contract shall be waived or modified without an approved, written amendment to this Contract. Amendments shall be effective only if in writing and signed by all parties.
- 11.2 Any request for an amendment shall be in writing, shall be delivered in person, courier or U.S. mail and shall be directed to the persons and addresses specified herein.

12. DISPUTES

- 12.1 In the event of a dispute under this Contract, the parties agree to make a good faith attempt to resolve the dispute prior to taking formal action.
- 12.2 If the dispute cannot be resolved pursuant to Subsection 12.1 above, the dispute shall be resolved in an administrative hearing pursuant to A.R.S. ' 41-2615 and A.A.C. R2-7-901, *et seq.*
- 12.3 This Contract shall be construed in accordance with Arizona law and any legal action thereupon shall be initiated in the State of Arizona.

13. TERMINATION OF CONTRACT

The Commission, the State or Contractor may terminate this Contract under the following conditions:

- 13.1 The Commission, in addition to other rights set forth elsewhere in the Contract, may terminate this Contract in whole or in part without cause effective thirty (30) days after mailing written notice of termination by certified mail, return receipt requested to the Contractor.
 - 13.1.1 In the event of termination as provided in this Section, the Contractor shall stop all work as specified in the notice of termination and immediately notify all Subcontractors in writing to do the same.
 - 13.1.2 The Contractor shall be paid the Contract price for all services and items completed up to the date of termination. In addition, the Contractor will be paid its reasonable actual costs for work in progress as determined by GAAP up to the date of termination. Upon such termination, the Contractor shall deliver to the Commission a complete set of all documents, programs and other information prepared in performance of the Contract.
- 13.2 The Commission may terminate this Contract in whole or in part if, during the term of this Contract, the Contractor is listed on the Master List of debarments, suspensions and voluntary exclusions maintained pursuant to A.A.C. R2-7-933. In such case, the Executive Director shall transmit written notice of termination to the Contractor by certified mail, return receipt

requested, and this Contract shall be terminated effective upon receipt thereof by the Contractor or such later date as is specified in the notice. In the event the Executive Director terminates this Contract in whole or in part as provided in this Subsection, all subsections of this Section 13 are incorporated into this Subsection by reference and shall apply to the same extent as if expressly set out herein.

- 13.3 The Commission may terminate this Contract by written notice to the Contractor if it is found by the Executive Director after notice and opportunity for a hearing that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the State with a view toward securing a Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such Contract.
- 13.4 Pursuant to A.R.S. '38-511 the Commission or any other agency of the State may, within three (3) years after its execution, cancel this Contract without penalty or further obligation by the Commission or such other State agency if any person significantly involved in initiating, negotiating, securing, drafting or creating this Contract on behalf of the Commission or such other State agency is, at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or a consultant to any other party of the Contract with respect to the subject matter of the Contract. Cancellation under this subsection shall be effective when written notice from the Commission or such other State agency is received by all other parties to the Contract unless the notice specifies a later time. In addition to the right to cancel this Contract as provided in this Subsection, the Commission or such other State agency may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this Contract on behalf of the Commission or such other State agency from any other party to this Contract arising as the result of this Contract.
- 13.5 This Contract may be terminated by mutual written agreement of the parties specifying the termination date therein.
- 13.6 If monies are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled without any further obligation upon the Commission or State.
- 13.7 The Commission may, at any time, by written order to the Contractor, require the Contractor to stop all or any part of the work called for by this Contract for a period of ninety (90) calendar days after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of a stop work order, the Contractor shall immediately cease all work being performed hereunder and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work suspension. The Commission may, in its sole discretion, extend for ninety (90) days the term of or cancel a stop work order at any time. If the Commission cancels a stop work order or the period of a stop work order or any extension thereof expires, the Contractor shall promptly resume work. If the Commission issues a stop work order, the Commission shall make an equitable adjustment in the performance schedule and the Contract shall be amended accordingly.
- 13.8 The Commission may terminate this Contract upon the failure of the Contractor to cure a default

under this Contract. The Commission may also terminate this Contract if the Contractor demonstrates a pattern of noncompliance, regardless of whether the defaults are ultimately cured.

14. DEFAULT

- 14.1 The Commission, in addition to other rights set forth elsewhere in the Contract, may by written notice of default require that the Contractor cure any default within a period of time specified by the Commission in the notice of default. Upon receipt of a notice of default, the Contractor shall promptly send written acknowledgment of receipt of the notice of default to the Commission. If the Contractor fails to cure the default within the time period specified in the notice of default, the Commission may terminate this Contract in whole or in part if the Commission determines that the Contractor has failed to perform any requirement.
- 14.2 The Contractor shall continue the performance of this Contract to the extent not terminated.
- 14.3 In the event the Commission terminates this Contract in whole or in part as provided in this Section, the Commission may procure, upon such terms and in such manner as deemed appropriate, services similar to those so terminated, and unless the Contractor is a governmental agency, instrumentality or subdivision thereof, or Indian tribe, it shall be liable to the Commission for any excess costs incurred by the Commission in obtaining such similar services.
- 14.4 Except with respect to defaults of Subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes, natural and unnatural, that are unanticipated and beyond the control and which occur without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the State or Federal Government in either their sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, unanticipated loss of personnel, unanticipated changes in availability of patient populations, and unanticipated equipment malfunctions. If the failure to perform is caused by the default of Subcontractor, and if such default arises out of causes beyond the control of both the Contractor and Subcontractor and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.
- 14.5 If this Contract is terminated as provided herein, the Commission, in addition to any other rights provided in this Section, may require the Contractor to transfer title to and deliver to the Commission or its successor or assigns, in the manner and to the extent directed by the Commission, such partially completed reports or other documentation as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated consistent with Section 5 herein. Payments for completed reports and other documentation delivered to and accepted by the Commission shall be at the Contract price. Payment for partially completed reports and other documentation delivered to and accepted by the Commission shall be in an amount agreed upon by the Contractor and the Commission.
- 14.7 The rights and remedies of the Commission enumerated in this Section shall be in addition to any other rights and remedies provided by or under this Contract by law.

15. NON-DISCRIMINATION

The Contractor shall comply with State Executive Order No. 99-4 and A.R.S. ' '41-1461 *et seq.*, which mandate that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities. The Contractor shall comply with all other applicable federal and state employment laws, rules and regulations, including the Americans with Disabilities Act. The Contractor shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

16. ASSIGNMENT OF OVERCHARGES

The Contractor, the Commission and the State recognize that in actual economic practice overcharges resulting from antitrust violations are in fact borne by the purchaser. Therefore, the Contractor hereby assigns to the Commission and the State any and all claims for such overcharges.

17. CONTRACT PAYMENTS

17.1 Payments made by the Commission to the Contractor pursuant to this Contract are conditioned upon the availability to the Commission of funds authorized for expenditure in the manner and for the purpose herein. The Commission shall not be liable for any purchases or Subcontracts entered into by the Contractor in anticipation of such funding.

17.2 Payments made by the Commission to the Contractor are conditioned upon receipt of timely, accurate, and complete reports to be submitted by the Contractor. The Commission will pay the Contractor within sixty (60) days of receipt of timely, accurate, and complete reports.

17.3 If the Contractor is in any manner in default in the performance of any obligation under this Contract, or if audit exceptions are identified, the Commission may, at its option and in addition to other available remedies, either adjust the amount of payment or withhold payment until satisfactory resolution of the default or exception. The Contractor shall have the right to written notice of the Commission=s action in adjusting the amount of payment or withholding payment. Under no circumstances shall the Commission authorize payments to the Contractor that exceed an amount specified in the Contract without an approved written amendment to the Contract. The Commission may, at its option, withhold payments or terminate the contract for failure to file required reports or until all final reports and deliverables are received.

17.4 Contractor shall not have discretion under this Contract to carry-over funds or services delivery from one state fiscal year to a subsequent state fiscal year. Contract continuation is subject to the following conditions:

17.4.1 Availability of funds; and

17.4.2 Demonstration of sufficient progress toward Contract goals and objectives of the research as set forth in the Proposal or Work Statement; and

17.4.3 Work Statement and Contract rates negotiated and agreed to by both parties.

17.5 Under any extension of work authorized under section 14.4, the Contractor shall submit all revised requests for payment during the extension period.

- 17.6 The Commission will not authorize a revised expenditure report unless the Contractor has submitted such report to the Commission on or before June 1 of the year following the year to which the revision applies.

18. RECOUPMENT OF CONTRACT PAYMENTS

18.1 Unacceptable Expenditures

The Contractor shall reimburse the Commission for all Contract funds expended which are determined by the Commission or the Auditor General not to have been disbursed by the Contractor in accordance with the terms of this Contract.

18.2 Contracted Services

18.2.1 If the services to be performed as described in this Contract are materially less than one hundred percent (100%) of the services required hereunder, funds to be returned to the Commission will be determined by multiplying the unit of service cost as listed in the Budget Requests by the number of services which are below the one hundred percent (100%) requirement.

18.2.2 If the number of services provided in any service name is less than the services for which the Contractor received compensation, funds to be returned to the Commission shall be determined by multiplying the unit of service cost as listed in the Budget Requests by the number of services Contractor did not provide during the budget term.

18.3 Refunds

The Contractor shall, within forty-five (45) days of termination, refund the greater of the amount refundable in accordance with Subsection 17.2 hereof (Contracted Services).

19. MANAGEMENT OF FUNDS

For all Contracts, the practices, procedures and standards specified in and required by the Accounting and Auditing Procedures Manual for Arizona Department of Administration Funded Programs shall be used by the Contractor in the management of Contract funds and by the Commission when performing a Contract audit. Funds collected by the Contractor in the form of fees, donations and/or charges for the delivery of these Contract services shall be accounted for in a separate fund.

20. ALLOWABLE EXPENDITURES

Expenditure of funds advanced, or qualifying for reimbursement, pursuant to this Contract shall be made by the Contractor only for the following:

20.1 Services or material approved or appropriated for, and used in, the performance of services herein agreed to be provided.

20.2 Services or materials which are received by the Contractor:

- 20.2.1 During the Contract term for which the funds are made available; and
 - 20.2.2 On or after the effective date of the Contract or, with regard to funds made available during a Contract term by an amendment to the Contract, on or after the effective date of that amendment; and
 - 20.2.3 On or before the termination date.
- 20.3 Dollar amounts approved in the account classifications shown on the annual Budget Summary Page of this contract may be adjusted within ten percent (10%) of the original amount shown provided that the total amount of the contract shown on the Budget Summary Page remains unchanged. Adjustments shall be made in accordance with the following:
- 20.3.1 The Contractor and Principal Investigator may reassign funds within the personnel category without requesting a change in writing so long as personnel are not being added or replaced. If key personnel are being added or replaced, the request must be made in writing. Approval by the Executive Director of the requested change constitutes a contract amendment.
 - 20.3.2 The salary limits for Principal Investigators shall not be exceeded.
 - 20.3.3 The Contractor and Principal Investigator may reassign funds without restriction from one category to another among all other categories in which funds have been approved except Personnel and Equipment. In order to reassign funds from Personnel or Equipment to any other category or reassign funds from any other category to Personnel or Equipment, the Contractor must make a written request to the Executive Director for such reassignment and the Executive Director must approve the request in writing
 - 20.3.4 The Contractor shall submit a written request to the Commission for approval before the Contractor may reassign funds to a category in which no funds were approved in the annual Budget Request.

21. VISITATION AND INSPECTION

- 21.1 The Contractor agrees that the Commission and any other appropriate agent of the State or Federal Government, or any of their duly authorized representatives, shall have access during reasonable hours to the Contractor=s or Subcontractor=s facilities and the right to examine Contractor=s or Subcontractor=s contract files, documents and records involving transactions related to this Contract.
- 21.2 The Contractor further agrees to include in any Subcontracts relating to this Contract a provision to the effect that the Subcontractor agrees that the Commission and any other appropriate agent of the State or Federal Government, or any of their duly authorized representatives, shall have access to the Subcontractor=s facilities and the right to examine any books, documents and records of the Subcontractor, involving transactions related to the Subcontract and that such books, documents and records shall not be disposed of except as provided herein.

22. EQUIPMENT

- 22.1 The title to equipment purchased through expenditure of funds from the Commission costing \$5000 or less for a single item or equipment having a shelf life of 2 years or less will remain with the Contractor. The title to equipment purchased through expenditure of funds from the Commission costing in excess of \$5000 or having a shelf life of more than 2 years, for a single item shall remain the property of the Commission unless the Commission, in its sole discretion, agrees to transfer title to the Contractor. The final disposition of all Commission property shall be determined by the Commission in accordance with applicable statutes and rules relating to State Materials Management.
- 22.2 The Contractor agrees to exercise reasonable control over all equipment purchased with capital outlay expense of Contract funds. All Commission equipment lost, stolen, rendered unusable or no longer required for research project operation must be reported immediately to the Commission for disposition instructions. The Contractor shall conduct a physical inventory of Commission equipment, using forms supplied by the Commission, within sixty (60) days after the end of the Contract.
- 22.3 Requests for purchases of capital equipment which were not part of the original budget must be submitted prior to the third quarter of the Contract for all one year Contract awards. The same restriction applies to the final year of multi-year Contract awards. All new requests for purchases of capital equipment must be requested and justified in writing and require the written approval of the Executive Director.
- 22.4 Expenditures submitted for maintenance and/or repairs of equipment necessary to the research may be reimbursed upon approval by the Commission. Upon prior written approval maintenance agreements may be purchased for new equipment acquired under this contract. Maintenance agreements may only be purchased for the duration of the contract under which the equipment was acquired or is to be used. Requests for approval must be made in the Annual Budget Summary or in a Budget Transfer Request.

23. INFRINGEMENT OF PATENTS AND COPYRIGHTS

- 23.1 Unless the contractor is an agency insured pursuant to A.R.S. ' 41-621, *et seq.*, the Contractor, at his/her sole expense, shall defend any claim, action, or suit which may be brought against the Commission for the infringement of United States patents or copyrights arising from the Contractor=s use of any equipment, materials, or information prepared or developed in connection with performance of this Contract. In any such claim, action, or suit the Contractor shall satisfy any final judgment for such infringement. The Commission shall give the Contractor written notice of such claim, action, or suit together with full information. The Commission shall cooperate with the Contractor with regard to any claim, action, or suit. The Commission, acting in its sole discretion may participate in the

defense of any such claim, action, or suit if principles of governmental or public law are involved, however, if the Commission participates it shall not assess its costs or expenses to the Contractor under this subsection without the Contractor=s written consent.

23.2 If, in the Contractor=s opinion, the equipment, materials or information mentioned

in Section 22 above is likely to or becomes the subject of a claim of infringement of a United States patent or copyright, then without diminishing the Contractor=s obligation to satisfy any final award, the Contractor may, with the Chairman=s written consent, substitute other equally suitable equipment, materials and information, or at the Contractor=s option and expense, obtain the right for the Contractor or the Commission to continue the use of such equipment, material and information.

24. ARIZONA LAW

This Contract is governed by the laws of the State of Arizona including the Arizona Procurement Code (A.R.S. Title 41, Chapter 23) and the Arizona Procurement Code Rules and Regulations (A.C.C.R. Title 2, Chapter 7).